

STATE OF SOUTH CAROLINA

(Caption of Case)

IN THE MATTER OF COMPLAINT OF SPRINT
COMMUNICATIONS COMPANY L.P. AGAINST
PBT TELECOM, INC.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 389 - C

(Please type or print)

Submitted by: John J. Pringle, Jr.

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

ELLIS:LAWHORNE

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April 6, 2009

FILED ELECTRONICALLY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

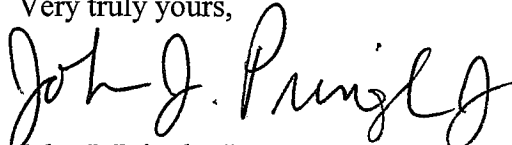
RE: In the Matter of Complaint of Sprint Communications Company L.P.
Against PBT Telecom, Inc.
Docket No. 2008-389-C, ELS File No. 1395-11589

Dear Mr. Terreni:

Enclosed for filing is **Sprint's Reply to PBT's Answer** for filing in the above-referenced docket. By copy of this letter, I am serving all parties of record and I enclose my Certificate of Service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: Nannette S. Edwards, Esquire (via electronic and first-class mail service)
William R. Atkinson, Esquire (via electronic and first-class mail service)
all parties of record

Enclosures

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN THE MATTER OF COMPLAINT OF SPRINT COMMUNICATIONS COMPANY L.P. AGAINST PBT TELECOM, INC.	Docket No. 2008-389-C
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SPRINT'S REPLY TO PBT'S ANSWER

Sprint Communications Company L.P. ("Sprint") files this brief Reply to the Answer of PBT Telecom, Inc. ("PBT"), filed on March 25, 2009.

INTRODUCTION

The gist of PBT's Answer to Sprint's February 11, 2009 Complaint, i.e., that all Sprint had to do to implement the parties' interconnection agreement was to stop trying to talk to PBT and simply send PBT an access service request ("ASR"), and all would be perfectly well with Sprint's interconnection plans in PBT's service territory, is insulting, preposterous and unconscionable, all at the same time. Aside from the language in the parties' interconnection agreement ("ICA") that clearly contemplates certain very basic information being exchanged between the parties prior to Sprint's submission of an ASR (e.g., mutual agreement on sizing and quantity of trunks, receipt by Sprint of PBT's electronic or manual ASR form, where to send the ASR, who PBT's SS7 provider is, what PBT's point codes are, etc.), any carrier acting in good faith and with a genuine intention to implement the parties' interconnection agreement without undue delay would have communicated this "interpretation" of the ICA at the very first contact between the parties' interconnection groups after the execution of the parties' ICA, which was over seven (7) months ago, in August, 2008. Instead, PBT failed to communicate this "position" in response to numerous requests from Sprint personnel and a demand letter from Sprint's

counsel, and only articulated same thirty days following service by the Commission of Sprint's formal complaint in this Docket.

Moreover, PBT should be estopped from making this preposterous argument at the outset because PBT personnel told Sprint personnel in effect not to bother sending an ASR unless and until certain information was exchanged. Finally, based on PBT's prior conduct in this matter, it appears likely that, absent the Commission's immediate and decisive intervention, PBT would find untold numbers of flaws in any ASRs submitted by Sprint, thus indefinitely delaying implementation of the parties' agreement.

ARGUMENT

a. The plain language of the parties' agreement clearly contemplates certain information being exchanged prior to Sprint's submission of an ASR

Section 2. 7 ("Facility Sizing") of the parties' Interconnection Attachment clearly calls for certain fundamental information being transmitted between the parties prior to Sprint's submission of an ASR to PBT:

The Parties will mutually agree on the appropriate sizing of the transport facilities. The capacity of transport facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. CLEC will order trunks in the agreed-upon quantities via an Access Service Request ("ASR"). (emphasis added)

It is clear from the above-cited language that the parties are required to discuss and agree upon, at a minimum, the sizing and quantity of trunks to be ordered prior to Sprint submitting an ASR. Plain old common sense would also dictate that Sprint possess certain other very basic information prior to submitting an ASR, such as PBT's proposed electronic or manual ASR form, the electronic or manual address to which Sprint should send completed ASRs, the identity of PBT's SS7 provider, and PBT's point codes. The necessity for some of this basic information, such as point codes, is supported by PBT's own e-mail correspondence to Sprint

(see Exhibit A, attached hereto). The familiar legal maxims, “The law compels no one to do vain or useless things”¹ and “The law commands not useless things, because useless labor is foolish”² are relevant here: without the inclusion of this very basic information, Sprint’s ASR, if received at all by PBT, is bound to be rejected by PBT for incompleteness, thus necessitating an indefinite number of follow-up messages and correspondence until Sprint “gets it right”, if ever. Further, the law will not require a futile act. Shupe v. Settle, 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct.App.1994).

b. PBT’s obligation to act in good faith to implement the parties’ agreement required PBT to inform Sprint of its interpretation of the ASR provisions at the outset on contact between the parties’ respective interconnection groups, over seven (7) months ago

The parties’ agreement includes a requirement for the parties to act in good faith in performing their respective obligations under the agreement. See Section 17 (“Good Faith Performance”) of General Terms and Conditions:

In the performance of their obligations, the Parties shall act in good faith under this Agreement. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed. (emphasis added)

This language requires that the parties adhere to a certain standard of conduct as they work together to implement the provisions of the agreement. Accordingly, PBT violated this standard of conduct by not informing Sprint of its purported interpretation of the interconnection provisions of the agreement, i.e., that the sole meaningful contact between the parties with regard to interconnection is accomplished through the submission of an ASR only, at the outset, when Sprint and PBT interconnection personnel first exchanged e-mails in August, 2008, over seven months ago. For PBT to remain silent while Sprint reached out in vain repeatedly to contact

¹ *Lex neminem cogit ad vana seu inutilia peragenda.*

² *Lex non praecipit inutilia, quia inutilis labor stultus.*

PBT during the course of several months is reprehensible, and not in any way, shape or form indicative of acting in good faith under the agreement.

c. PBT should be estopped from making its ASR argument because PBT told Sprint not to submit an ASR until certain information was exchanged.

This Commission should not tolerate PBT attempting to having it both ways, insisting that Sprint first submit an ASR, whether incomplete or not, as the only way to accomplish implementation of the parties' agreement, while at the same time telling Sprint not to submit the ASR before certain information is exchanged. But that is exactly what PBT is attempting to do. PBT personnel told Sprint personnel via e-mail in August, 2008, that "[t]he only thing we will need is the point code and CLLI of your switch for the SS7 signaling", and "[b]efore you send out your ASR talk to me about how you would like it delivered." See Exhibit A, attached hereto. It is clear from this correspondence that even PBT's employees recognized that certain information would be exchanged between the parties before Sprint transmitted its ASR to PBT, and for PBT to now claim otherwise is, at best, disingenuous.

CONCLUSION

Ultimately, PBT's Answer actually raises more questions and causes Sprint more concern about when the parties' ICA will actually be implemented than prior to Sprint filing its Complaint in this proceeding. Accordingly, Sprint respectfully requests that the Commission summarily rule on the pleadings submitted and impose Sprint's proposed interconnection implementation schedule upon PBT immediately, so that Sprint may commence its market rollout in PBT's territory without further delay, as well as such other and further relief as this Commission deems just and proper.

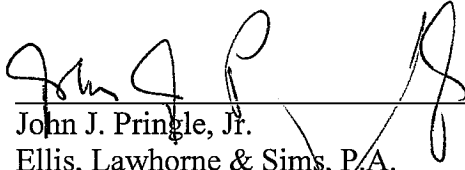
Without PBT being required to follow a specific timetable for implementation of its interconnection obligations under the parties' agreement, it seems quite likely based on PBT's

conduct thus far that an unending parade of other, equally imaginative “interpretations” of the parties’ agreement, or endless exchanges regarding the proper form and content of Sprint’s ASRs, will emanate from PBT, all with the end result of indefinitely delaying Sprint’s market entry into PBT’s service territory. This scenario is even foreshadowed in PBT’s Answer, when PBT stated that it will respond to Sprint when it “has received *the appropriate ASR* from Sprint.” (emphasis added) Without receiving certain basic information from PBT at the outset, Sprint will be left to guess at, or leave blank, certain crucial pieces of information on the ASR form, thereby virtually guaranteeing that PBT will not have received “the appropriate ASR” from Sprint.

Only the Commission can act at this juncture to say “enough”, and compel PBT to actually and systematically implement by dates certain the interconnection obligations it entered into when it executed the interconnection agreement with PBT.

Respectfully submitted this 6th day of April, 2009.

SPRINT COMMUNICATIONS COMPANY L. P.



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Attorney for Sprint

Exhibit A

From: Jay Smith [mailto:jsmith@pbttel.net]
Sent: Wednesday, August 20, 2008 2:46 PM
To: Dahn, Mary C [NTK]
Subject: PBT IXC group

Mary,

The only thing we will need is the point code and CLLI of your switch for the SS7 signaling. Before you send out your ASR talk to me about how you would like it delivered. We can put it on our ring to Columbia.

Thanks,

Jay Smith
Provisioning Coordinator
PBT Telecom
803-894-1115
jsmith@pbttel.net



Communications for a changing world

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2008-389-C**

IN THE MATTER OF COMPLAINT OF SPRINT COMMUNICATIONS COMPANY L.P. AGAINST PBT TELECOM, INC.	CERTIFICATE OF SERVICE
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This is to certify that I have caused to be served this day, one (1) copy of **Sprint's Reply to PBT's Answer** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

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Carol Roof
Paralegal

April 6, 2009
Columbia, South Carolina